

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

<p>JERRY LEE CRAIG, SR.,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>STATE OF SOUTH DAKOTA, in service of the people, official capacity; GRANT FLYNN, Attorney General, Official Capacity; BRENT FLUKE, Warden,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">4:23-CV-04056-KES</p> <p style="text-align: center;">ORDER GRANTING PLAINTIFF'S MOTION TO PROCEED IN FORMA PAUPERIS ON APPEAL AND REQUIRING AN INITIAL PARTIAL FILING FEE</p>
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Plaintiff, Jerry Lee Craig, Sr., is an inmate at the Mike Durfee State Prison in Springfield, South Dakota. Docket 6 at 2. Craig filed a pro se lawsuit pursuant to 42 U.S.C. § 1983. *Id.* at 3. The court granted Craig's motion for leave to proceed in form pauperis. Docket 8. Judgment was entered against Craig, and he filed a notice of appeal. Dockets 10 and 11. Now, Craig moves to proceed in forma pauperis on appeal, providing the court with a certified copy of his prisoner trust account report. Dockets 12 and 13.

Under the Prison Litigation Reform Act (the "Act"), a prisoner who "files an appeal in forma pauperis . . . [is] required to pay the full amount of a filing fee." 28 U.S.C. § 1915(b)(1). This obligation arises "the moment the prisoner . . . files an appeal." *Henderson v. Norris*, 129 F.3d 481, 483 (8th Cir. 1997) (omission in original) (quoting *In re Tyler*, 110 F.3d 528, 529–30 (8th Cir. 1997)). "[W]hen an inmate seeks pauper status, the only issue is whether the

inmate pays the entire fee at the initiation of the proceedings or over a period of time under an installment plan.” *Id.* (quoting *McGore v. Wigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997)). “[P]risoners who appeal judgments in civil cases must sooner or later pay the appellate filing fees in full.” *Id.* (footnote omitted) (citing *Newlin v. Helman*, 123 F.3d 429, 432 (7th Cir. 1997)).

In *Henderson*, the Eighth Circuit Court of Appeals set forth “the procedure to be used to assess, calculate, and collect” appellate filing fees in compliance with the Act. 129 F.3d at 483. First, the court must determine whether the appeal is taken in good faith. *Id.* at 485 (citing 28 U.S.C. § 1915(a)(3)). Then, so long as the prisoner has provided the court with a certified copy of his prisoner trust account, the court must “calculate the initial appellate partial filing fee as provided by § 1915(b)(1), or determine that the provisions of § 1915(b)(4) apply.” *Id.* The initial partial filing fee must be 20 percent of the greater of:

- (A) the average monthly deposits to the prisoner’s account; or
- (B) the average monthly balance in the prisoner’s account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

28 U.S.C. § 1915(b)(1). Nonetheless, no prisoner will be “prohibited from . . . appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.” 28 U.S.C. § 1915(b)(4).

It appears Craig’s appeal is taken in good faith. Craig’s prisoner trust account shows an average monthly deposit of \$107.46 and an average monthly

balance of \$4.06. Docket 13 at 1. This court grants Craig leave to proceed in forma pauperis but requires him to pay an initial partial filing fee of **\$21.49 (20 percent of his average monthly deposit) by October 27, 2023.**

Thus, it is ORDERED:

1. That Craig's motion for leave to proceed in forma pauperis on appeal (Docket 12) is granted. Craig must make an initial partial filing fee of **\$21.49 by October 27, 2023**, made payable to the Clerk of the U.S. District Court.
2. That the institution having custody of the Craig is directed that whenever the amount in Craig's trust account, exclusive of funds available to him in his frozen account, exceeds \$10, monthly payments that equal 20 percent of the funds credited to the account the preceding month shall be forwarded to the United States District Court Clerk's office pursuant to 28 U.S.C. § 1915(b)(2), until the appellate filing fee of \$505 is paid in full.

Dated September 28, 2023.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER  
UNITED STATES DISTRICT JUDGE